

ORIGINAL



0000110732

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2010 MAY -6 P 3:52

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
ARIZONA-AMERICAN WATER COMPANY, AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN ITS
RATES AND CHARGES BASED THEREON FOR
UTILITY SERVICE BY ITS ANTHEM WATER
DISTRICT AND ITS SUN CITY WATER
DISTRICT, AND POSSIBLE RATE
CONSOLIDATION FOR ALL OF ARIZONA-
AMERICAN WATER COMPANY'S DISTRICTS.

DOCKET NO. W-01303A-09-0343

Arizona Corporation Commission
DOCKETED

MAY - 6 2010



IN THE MATTER OF THE APPLICATION OF
ARIZONA-AMERICAN WATER COMPANY, AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE CURRENT FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN ITS
RATES AND CHARGES BASED THEREON FOR
UTILITY SERVICE BY ITS ANTHEM/AGUA
FRIA WASTEWATER DISTRICT, ITS SUN CITY
WASTEWATER DISTRICT AND ITS SUN CITY
WEST WASTEWATER DISTRICT, AND
POSSIBLE RATE CONSOLIDATION FOR ALL
OF ARIZONA-AMERICAN WATER
COMPANY'S DISTRICTS.

DOCKET NO. SW-01303A-09-0343

PROCEDURAL ORDER
CONDITIONALLY GRANTING
MOTION TO INTERVENE

BY THE COMMISSION:

On July 2, 2009, Arizona-American Water Company ("Arizona-American" or "Company")
filed with the Arizona Corporation Commission ("Commission") an application for rate increases for
its Anthem Water District, Sun City Water District, Anthem/Agua Fria Wastewater District, Sun City
Wastewater District, and Sun City West Wastewater District.

Intervention in this matter has been granted to the Residential Utility Consumer Office
("RUCO"); Anthem Community Council; Sun City West Property Owners and Residents Association
("PORA"); W.R. Hansen; the Water Utility Association of Arizona; the Camelback Inn, Sanctuary on

1 Camelback Mountain, the Intercontinental Montelucia Resort and Spa, and the Scottsdale
2 Cottonwoods Resort and Suites (collectively the "Resorts"); the Town of Paradise Valley; the
3 Anthem Golf and Country Club; Marshall Magruder; DMB White Tank, LLC; ; Mashie, LLC dba
4 Corte Bella Golf Club; Larry D. Woods;¹ and Philip H. Cook.

5 On March 18, 2010, a procedural order was issued bifurcating the hearing in this matter into
6 two phases, with the second phase to include Commission consideration of rate design and rate
7 consolidation issues, and setting associated procedural deadlines, including a new intervention
8 deadline of April 15, 2010, for persons desiring to participate in the second phase of the hearing. The
9 March 18, 2010 procedural order also set filing requirements and deadlines for intervenors on rate
10 design and rate consolidation issues.

11 On March 30, 2010, Arizona-American filed a Notice of Filing Affidavit of Customer Notice
12 indicating that it had mailed the notice required by the March 18, 2010 procedural order to all its
13 customers on March 25, 2010.

14 On April 16, 2010, the prehearing conference was held as scheduled. During the prehearing
15 conference, entities who had timely filed requests for intervention in order to participate in the second
16 phase of the hearing in this matter appeared, and were granted intervention.

17 On April 22, 2010, a filing signed by "Glenn W. Smith, Treasurer," and "Richard Alt,
18 Leader," was docketed. The filing requested intervention for Scottsdale Citizens for Sustainable
19 Water ("SWAT"), and stated that SWAT is a representative for 17 homeowners associations.

20 On April 27, 2010, Arizona-American filed its Response to Motion to Intervene in which it
21 requested that SWAT's Motion to Intervene be denied. The Company stated that the intervention
22 request was not docketed until April 22, 2010, which is well past the deadline for intervention of
23 Phase II of this proceeding of April 15, 2010. Arizona-American also stated that it did not appear
24 from the filing that SWAT has authorized representation by a lay person in this proceeding, contrary
25 to the requirements of Rule 31(d)(28) of the Rules of the Arizona Supreme Court.

26 On May 5, 2010, the same filing docketed on April 22, 2010 was filed, but with an additional
27

28 ¹ Mr. Woods, who was authorized to represent PORA in the first phase of this proceeding, wishes to participate in the
second phase of this proceeding on his own behalf, and not on behalf of PORA.

1 page attached. The attached page stated in part that “. . . SWAT has authorized Richard Alt,
2 President and Glenn Smith, Treasurer, to file necessary papers to qualify as Interveners in the Rate
3 Consolidation Request of Arizona-American Water Company . . .”

4 If SWAT wishes either Mr. Alt or Mr. Smith to be allowed to represent it, SWAT must
5 provide specific authorization, under the strict requirements of Rule 31(d)(28) of the Rules of the
6 Arizona Supreme Court, for a lay person meeting the rule’s requirements to represent a non-profit
7 entity in this matter.

8 The May 5, 2010 filing does not meet the requirements of Rule 31(d)(28) of the Rules of the
9 Arizona Supreme Court to allow either Mr. Alt or Mr. Smith to represent SWAT.

10 Pursuant to Rule 31(d)(28) of the Rules of the Arizona Supreme Court, a non-profit
11 organization may be represented by a corporate officer, employee, or a member who is not an active
12 member of the state bar, if (1) in the particular matter; (2) such representation is not the person’s
13 primary duty to the non-profit organization, but is secondary or incidental to such person’s duties
14 relating to the management or operation of the non-profit organization; and (3) the person is not
15 receiving separate or additional compensation (other than reimbursement for costs) for such
16 representation.

17 Rule 31(d)(28) of the Rules of the Arizona Supreme Court further states that the Commission
18 or presiding officer may require counsel in lieu of lay representation whenever it is determined that
19 lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens
20 on the other parties, or causing harm to the parties represented

21 Under the unique circumstances presented here, it is appropriate to conditionally grant
22 intervention to SWAT. We will condition SWAT’s intervention upon SWAT filing in this docket, no
23 later than **May 17, 2010**, either (1) specific authorization that a named corporate officer, employee, or
24 a member who is not an active member of the state bar may represent it in this particular matter; that
25 such representation is not the person’s primary duty to the non-profit organization, but is secondary
26 or incidental to such person’s duties relating to the management or operation of the non-profit
27 organization; and that the person is not receiving separate or additional compensation (other than
28 reimbursement for costs) for such representation; or (2) a notice of appearance of counsel. Once

1 SWAT has timely fulfilled either of the two requirements, its intervention will become effective. The
2 filing must actually be docket-stamped on or before May 17, 2010. SWAT's prior filings have
3 contained an erroneous docket number which has delayed docketing while the correct docket number
4 was researched. The most efficient means of ensuring that the filing is timely docketed is to bring the
5 filing with the required copies to the Commission's Docket Control Center, with the correct docket
6 number.

7 As explained in the prehearing conference, SWAT's participation in rate design and rate
8 consolidation issues will be limited to the procedural parameters set forth in the March 18, 2010
9 procedural order. Aside from the effects of possible rate consolidation, the rate designs of the
10 Company's districts other than its Anthem Water District, Sun City Water District, Anthem/Agua
11 Fria Wastewater District, Sun City Wastewater District, and Sun City West Wastewater District will
12 not be revisited in this proceeding. The deadline for intervenor testimony and associated exhibits to be
13 presented at hearing on behalf of intervenors on rate design and rate consolidation issues was due on or
14 before May 3, 2010, and that deadline has passed. Therefore SWAT's late intervention, in the event it is
15 made effective, will be limited to making an opening statement and to cross-examining witnesses on
16 their pre-filed testimony at the hearing, and to filing post-hearing briefs. Because of its late intervention,
17 SWAT cannot present testimony or other evidence in this proceeding.

18 In the event SWAT does not timely file the required documents to make its conditional
19 intervention effective, its individual members may appear at the commencement of Phase 2 of this
20 proceeding on May 18, 2010, and orally provide public comment on their own behalf.

21 IT IS THEREFORE ORDERED that Scottsdale Citizens for Sustainable Water is hereby
22 conditionally granted intervention in this proceeding, subject to filing, **no later than May 17, 2010**, a
23 document demonstrating compliance with the conditions required by Rule 31(d)(28) of the Rules of
24 the Arizona Supreme Court, or filing, **no later than May 17, 2010**, a notice of appearance of
25 counsel.

26 IT IS FURTHER ORDERED that if Scottsdale Citizens for Sustainable Water files the
27 required documents to make its conditional intervention effective, it may participate in this
28 proceeding through its appointed representative, subject to the parameters of the March 18, 2010

1 procedural order issued in this docket.

2 IT IS FURTHER ORDERED that in the event Scottsdale Citizens for Sustainable Water' does
3 not file the required documents to make its conditional intervention effective, its individual members
4 may appear at the commencement of Phase 2 of this proceeding on May 18, 2010, and orally provide
5 public comment on their own behalf.

6 IT IS FURTHER ORDERED that in the event Scottsdale Citizens for Sustainable Water's
7 intervention becomes effective by lay representation, pursuant to Rule 31(d)(28) of the Rules of the
8 Arizona Supreme Court, the Commission or presiding officer may still require Scottsdale Citizens for
9 Sustainable Water to be represented by counsel in lieu of lay representation if it is determined that lay
10 representation is interfering with the orderly progress of the proceeding, imposing undue burdens on
11 the other parties, or causing harm to the parties represented.

12 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
13 Communications) continues to apply to this proceeding and shall remain in effect until the
14 Commission's Decision in this matter is final and non-appealable.

15 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
16 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
17 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
18 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
19 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
20 Administrative Law Judge or the Commission.

21 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
22 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
23 hearing.

24 DATED this 6th day of May, 2010.

25
26 
27 TEENA WOLFE
28 ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered
this 6th day of May, 2010 to:

Thomas H. Campbell
Michael T. Hallam
LEWIS AND ROCA LLP
40 North Central Avenue, Suite 1900
Phoenix, AZ 85004
Attorneys for Arizona-American Water Co.

Judith M. Dworkin
SACKS TIERNEY PA
4250 North Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693
Attorney for Anthem Community Council

Lawrence V. Robertson, Jr.
P.O. Box 1448
Tubac, AZ 85646-1448
Attorney for Anthem Community Council

Daniel Pozefsky
RUCO
1110 West Washington Street, Suite 220
Phoenix, AZ 85007

Larry Woods, President
PROPERTY OWNERS AND
RESIDENTS ASSOCIATION
13815 East Camino Del Sol
Sun City West, AZ 85375

W.R. Hansen
12302 West Swallow Drive
Sun City West, AZ 85375

Greg Patterson
916 West Adams Street, Suite 3
Phoenix, AZ 85007
Attorney for Water Utility Ass'n of Arizona

Jeff Crockett
Robert Metli
SNELL & WILMER
One Arizona Center
400 East. Van Buren Street
Phoenix, AZ 85004-2202
Attorney for the Resorts

Andrew M. Miller
Town Attorney
TOWN OF PARADISE VALLEY
6401 E. Lincoln Drive
Paradise Valley, AZ 85253

Bradley J. Herrema
Robert J. Saperstein
BROWNSTEIN HYATT FARBER
SCHRECK, LLP
21 E. Carillo St.
Santa Barbara, CA 93101
Attorneys for Anthem Golf and Country Club

Marshall Magruder
P.O. Box 1267
Tubac, AZ 85646-1267

Norman D. James
FENNEMORE CRAIG, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012
Attorneys for DMB White Tank LLC

Larry D. Woods
15141 West Horseman Lane
Sun City West, AZ 85375


Joan S. Burke
LAW OFFICE OF JOAN S. BURKE
1650 North First Avenue
Phoenix, AZ 85003
Attorney for Corte Bella Golf Club

Philip H. Cook
10122 West Signal Butte Circle
Sun City, AZ 85373

SCOTTSDALE CITIZENS
FOR SUSTAINABLE WATER
7322 East Cactus Wren Road
Scottsdale, AZ 85250-4526

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Steve Olea, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

By: 
Debra Broyles
Secretary to Teena Wolfe